

COUNTY OF YORK

MEMORANDUM

DATE: May 29, 2002 (PC Mtg. 6/4/02)
TO: York County Board of Supervisors
FROM: James O. McReynolds, County Administrator
SUBJECT: Application No. UP-595-02, K. Dale Moore

ISSUE

This application requests a Special Use Permit, pursuant to Section 24.1-306 (Category 17, No. 7) of the York County Zoning Ordinance to authorize a 125-foot freestanding monopole communications tower within a flagpole structure. The subject parcel is located at 3010 Big Bethel Road (Route 600) and is further identified as Assessor's Parcel No. 37-158B.

DESCRIPTION

?? Property Owner: Wash-Moore Corporation

?? Location: 3010 Big Bethel Road (Route 600)

?? Area: 2.34 acres

?? Frontage: 183 feet on Big Bethel Road

?? Utilities: Public water and sewer

?? Topography: Flat

?? 2015 Land Use Map Designation: General Business

?? Zoning Classification: GB – General Business

?? Existing Development: Wash-Moore car wash facility

?? Surrounding Development:

North: Gas station and single-family detached home

East: None

South: Belmont Apartment complex

West: Single-family detached home and former produce stand across Big Bethel Road

?? Proposed Development: 125' freestanding monopole communications tower within a flagpole structure

CONSIDERATIONS/CONCLUSIONS

1. The proposed tower would be located on the north side of the Wash-Moore car wash facility located behind the Exxon gas station at the intersection of Hampton Highway (Route 134) and Big Bethel Road (Route 600). The Comprehensive Plan designates this intersection as a General Business node, and the property is zoned GB (General Business). A non-conforming single-family detached home is located to the north on GB-zoned property, and the properties to the east and west are also zoned GB. The Belmont apartment complex, zoned RMF (Residential Multi-Family), is located to the south. The nearest property zoned for single-family residential development is over 400 feet away on the west side of Big Bethel Road.
2. The proposed tower would be a co-location site with space for two wireless communications providers. As shown on the applicant's sketch plan, the tower would be set back approximately 235 feet from the edge of pavement for Route 134 (186 feet from the right-of-way line) and approximately 265 feet from Big Bethel Road (edge of pavement **and** right-of-way). For the applicant, this location serves the dual purpose of enhancing the visibility of his car wash business, which suffers from a lack of visibility from Route 134, and generating income through the leasing of tower space to wireless communication providers. Unlike previous tower proposals, the associated ground-mounted equipment would not be located at the base of the tower. Rather, the applicant plans to locate this equipment inside the existing Wash-Moore building, or, in a building addition. In the event that any construction is necessary, the applicant has expressed a desire to use the same building façade and materials that were used for the existing building; staff has included this as a condition of the use permit.
3. The proposed flagpole tower is a product of a company called TeleStructures, which was formed in 1992 and has designed and produced a variety of complete, compact patented wireless systems. TeleStructures markets itself as a "wireless site solution company dedicated to providing alternative antenna support design in response to the increasing objections to the proliferation of wireless towers across the United States." It specializes in pre-fabricated tower systems designed to blend in with their surroundings. Crosses, clock towers, and bell towers are among the products this company offers, in addition to flagpole towers, which have been erected in various places around the world, including California, Colorado, Georgia, and Massachusetts, as well as England and Brazil. The company offers a variety of flag sizes with dimensions ranging from a minimum of 8 feet by 12 feet (96 square feet) to a maximum of 12 feet by 18 feet (216 square feet). At 18 to 36 inches in diameter, these flagpole towers are much wider – and thus far more visible – than a typical flagpole. (By comparison, the main flagpole in front of the York-Poquoson Courthouse is ten inches in diameter.)
4. Pursuant to Section 24.1-707(n) of the Zoning Ordinance, flagpoles are subject to the same building height limitations applicable to the zoning district in which they are located. In the GB district, the maximum building height is fifty feet (50'). The proposed flagpole tower would exceed this limit by 75 feet, or 150%.

5. Traditional flag etiquette dictates that American flags be illuminated when displayed at night.¹ I believe that illumination of a flag at the top of a 125-foot flagpole would cause excessive light pollution and should not be permitted. In addition, if this application is approved, I recommend that the applicant be limited to flying the American flag only and that corporate logo flags be expressly prohibited. Businesses are allowed to have a single corporate logo emblem flag, but only at a height of fifty feet (50') in the GB zoning district. To allow any type of advertising signage at a height of one hundred feet (100') or more, for whatever reason, would create visual clutter and set a dangerous precedent. (Note that Section 4(i) of the referenced "Federal Flag Code" states that "Advertising signs should not be fastened to a staff or halyard from which the flag is flown.") It would also contradict the County's consistent policy of prohibiting the use of telecommunications towers for advertising. These requirements have been included as conditions in the proposed resolution for approval.
6. The Federal Aviation Administration (FAA) will analyze the proposed tower to ensure that it will not infringe on air traffic flight patterns. If the FAA requires a permit for the construction of the tower, the applicant will need FAA approval prior to the County's final approval for construction of the tower. A condition to this effect is included as part of the approving resolution. The proposed tower will not penetrate any of the air space protected by the provisions of the County's Airport Safety Overlay District.
7. As a condition of approval, the applicant will be required to submit a statement from a registered engineer certifying that NIER (nonionizing electromagnetic radiation) emitted from the tower will not result in a ground level exposure at any point outside such facility that exceeds the maximum applicable exposure standards established by any regulatory agency of the U.S. Government or the American National Standards Institute.
8. Although the Telecommunications Act of 1996 did not preempt local zoning authority, localities are somewhat constrained in their ability to deny or delay requests for towers. Such decisions may be enjoined or overturned by the FCC or federal courts if the intent or the effect of the decision is to discriminate between types of communications service providers. The can also be overturned if the decision is not reached within a reasonable period of time, if the denial is unreasonable, or if the denial is based on public health concerns relating to radio frequency emissions. Additionally, the Act places an obligation upon localities to assist the telecommunications providers in finding a facility somewhere within the footprint (coverage area).

PLANNING COMMISSION RECOMMENDATION

¹ Section 2(a) of Public Law 94-344, also known as the "Federal Flag Code" states that "It is the universal custom to display the flag only from sunrise to sunset on buildings and on stationary flagstaffs in the open. However, when a patriotic effect is desired, the flag may be displayed twenty-four hours a day if properly illuminated during the hours of darkness."

The Planning Commission considered this application at its May 8 meeting and, subsequent to conducting a public hearing at which one citizen (in addition to the applicant) spoke, voted 5:0 (Messrs. Heavner and Simasek absent) to recommend approval.

COUNTY ADMINISTRATOR RECOMMENDATION

Located at a commercial intersection, the proposed tower site is consistent with the County's general goal of keeping towers outside of residential areas whenever possible, although there is one non-conforming home within approximately ninety feet (90'). Apart from the Belmont apartments to the rear, which are more than 200 feet away and are well buffered from the Wash-Moore site, the nearest residentially zoned property is more than 400 feet away. The proposed flagpole tower is also consistent with Utilities Strategy 3.5 of the Comprehensive Plan, which states that new antenna support structures should "blend into the surrounding environment when possible." With Bethel Manor nearby, this area has the highest concentration of military personnel in the County, and a tower "disguised" as a flagpole flying the American flag would blend into the surrounding environment much better than an ordinary tower. The visual obtrusiveness of a 125' tall structure – with a diameter of 18 to 36 inches – would be mitigated somewhat by the fact that it would be set back over 200 feet from nearby streets. Although such structures might not be appropriate elsewhere in the County, I believe that this application, because of the particular characteristics of the proposed tower site, offers an unusual opportunity to expand telecommunications coverage without sacrificing the aesthetic goals. Therefore, based on the considerations and conclusions as noted, I recommend that the Board approve this application subject to the conditions contained in proposed Resolution No. R02-113.

Carter/3337

Attachments

?? Excerpt of unapproved Planning Commission minutes, 5/8/02

?? Zoning Map

?? Site Plan

?? Photographs of flagpole towers

?? Proposed Resolution No. R02-113